

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

March 11, 2010

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Proposed Rule Amendment OA 10-2
Request for Public Hearing and Small Business Impact
Determination: Petition to Amend Title 13, Chapter 5,
Hawaii Administrative Rules (13-5, HAR) to Redesignate
Land That Lies Within the Conservation District Limited
Subzone into the Resource Subzone

**PETITIONER/
LANDOWNER:** Mr & Mrs. James Case

LOCATION: Makiki, Honolulu, Oahu

TMK: (1) 2-5-018:021

PETITION AREA: Approximate (\approx) 63,219-ft²

SUBZONE: Limited

DESCRIPTION OF AREA AND CURRENT LAND USE:

The subject parcel is located in the neighborhood of Tantalus, Makiki, on the island of Oahu and consists of two lots of record. The parcel is surrounded by private properties and abuts Round Top Drive to the west. A residence, two water tanks and associated residential improvements exist on the property (**Exhibit A, B & C**).

Existing Land Use Classification

The majority of the property appears to lie within the Limited subzone of the Conservation District (**Exhibit D**). Pursuant to §13-5-12, Hawaii Administrative Rules (HAR), the objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities. This subzone shall encompass:

1. Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the county, state, or federal governments; and

2. Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity or landslides, or which have a general slope of forty percent or more.

Geographic and Soil Characteristics

According to the petition, the property straddles the Round Top ridgeline and is bounded on the east by a precipitous cliff that forms the western valley wall of Manoa Valley. A steep slope in excess of 40% descends beyond the eastern property boundary to the Manoa valley floor. The western side of the property consists of a steep narrow strip of land between Round Top Drive and a graded plateau that rises \approx 15-feet from the road. The boundary between the two lots includes portions of the flat plateau and the steeply sloped areas.

Soils within and around the subject area are mostly shallow, rocky and well drained. No erosion hazards or volcanic hazards are known to exist. According to the petitioner, the property has shown no evidence of erosion or soil instability. As the majority of the property consists of a graded plateau, it is not susceptible to flooding.

Hydrological Characteristics

Median annual rainfall ranges between 60-70 inches. The property is located in Zone X of the Federal Emergency Management Area (FEMA) Flood Insurance Rate Maps (FIRM), areas to be determined to be outside 0.2% annual chance flood plain. No surface water features are situated on the property.

Biological Characteristics

Flora & Fauna

The eastern half of the parcel is heavily vegetated with Koa, Kukui, Eucalyptus and Christmas berry trees. The western half of the property is heavily landscaped with ornamental plants and surrounding yard associated with the existing house. Feral cats, field rats, mongoose and common introduced birds may be found on the property. It is believed that there are no known threatened or endangered flora, fauna or habitats on the property. There is a critical habitat on the Manoa cliffs for *Lobelia mnostachya* on the neighboring property \approx 200-feet northeast from the property boundary.

Historical Characteristics

The property was part of a residential subdivision know as the *Tantalus Lots* or the *Tantalus Summer Lots* that were created in the early 1900's. The residence and one of the water tanks are nonconforming as the structures were constructed on the property in the late 1940's prior to Conservation District laws. A second water tank was constructed in 1971 under Conservation District Use Permit (CDUP) OA-160. Land court records indicate that this parcel was made up land grants and portions of land grants as recorded in 1960 and then subdivided into the two lots of record in 1961.

According to the petition, based upon anecdotal information and an analysis of historic topographic maps, it appears that the property originally consisted of a small hill, known as Puu Makani. The hill was apparently graded flat by a former landowner for the existing home site. The result is a flat plateau about 15 feet higher than Round Top Drive. Noted architect Vladimir Ossipoff designed the residence.

Scenic or Visual Resources

The property is screened from Round Top Drive by an embankment and heavy vegetation that limits views from the street. The existing vegetation generally obscures views of the residence from neighboring properties.

The property overlooks much of Downtown Honolulu and out towards East Honolulu, with views of the Pacific Ocean and Diamond Head.

Infrastructure

Currently access to the parcel is provided by Round Top Drive. Electricity and phone service are available. Water is via catchments with primary and secondary filters located at the residence. An individual wastewater system is located underground on Lot 2 as no City sewer system serves Round Top Drive.

PROPOSED ACTIONS OF THE PETITIONER:

The petitioner is requesting that a portion of his property that lies within the Limited subzone be redesignated into the Resource subzone (**Exhibit E**).

Review of Property Characteristics in Relation to the Proposed Subzone Objectives

As described in §13-5-13, HAR, the objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. Specifically, the Resource Subzone shall encompass:

1. Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
2. Lands suitable for growing and harvesting of commercial timber or other forest products;
3. Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;
4. Lands and state marine waters seaward of the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves on shore to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

Much of Tantalus lies within the Resource subzone as the area is part of the Honolulu watershed with the exception of some lots that are located above the western ridge of Manoa Valley.

The petition notes that the adjustment of the Limited/Resource boundary could potentially increase the use/density of the property; this increase would not be realized unless granted by the Department or Board.

STAFF ANALYSIS:

Pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), any change to Conservation District Subzone boundaries must be made by amending Chapter 13-5, HAR. Statutes and rules which govern the process by which amendments of Chapter 13-5, HAR, may be made include:

- A. §91-2 through 91-7, Hawaii Revised Statutes (HRS);
- B. §2, Act 168, Session Laws of Hawaii 1998;
- C. §183 C-4, HRS;
- D. §13-1, Subchapter 3, Hawaii Administrative Rules (HAR); and
- E. §13-5-16, HAR.

Petitions to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. The draft version of the proposed rule change shall be submitted to those agencies for review. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorization for both public hearing and final approval.

Authorization for Public Hearing:

The first major step to amend the administrative rules is to hold a public hearing. The request for public hearing is the subject of this staff submittal. Should the Board of Land and Natural Resources (Board) approve the subject request, the Department would forward the request for public hearing to the Governor for approval. At the Board's discretion, the Board may modify the proposed rule change at this time.

Approval/Disapproval:

After public hearing, the second major step would be to seek the Board's discretion to forward the proposed rule change to the Governor for approval. The Board may also modify the proposed rule change at that time. Both the Legislative Reference Bureau and the Department of the Attorney General would review, and the Department of the Attorney General approves as to form, the proposed rule change prior to forwarding the proposed rule change to the Governor for decision.

State Policies and Procedures:

The Governor of the State of Hawaii has issued Administrative Directive No. 09-01 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address certain policy topic areas. By this submittal, staff proposes that the general content of this

petition be transmitted to the Governor's Office along with any approved request for public hearing.

Chapter 343, HRS, Requirements:

Staff believes that due to the scope and nature of the proposed amendment, that Chapter 343, HRS is not applicable since no land use is being proposed.

Section 2 of Act 168, Session Laws of Hawaii 1998, The Hawaii Small Business Regulatory Flexibility Act:

Staff is of the opinion that the proposed rule amendment will not impact or affect small business. Therefore, no "Small Business Impact Statement" or "Small Business Statement" is required.

DISCUSSION:

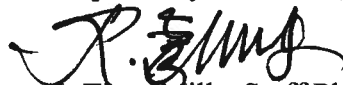
The subject request is to take the proposed subzone redesignation rule amendment to public hearing and to determine if the proposed action would have an affect on small business. The proposed subzone redesignation would not affect any small business.

STAFF RECOMMENDATION:

That the Board of Land and Natural Resources:


1. Approve the petitioner's request to process the subject petition to amend Chapter 13-5, Hawaii Administrative Rules;
2. Determine that the proposed rule amendment will not impact or affect small business;
3. Authorize the forwarding of a request for public hearing to the Governor, State of Hawaii, on the proposed rule amendment;
4. Upon executive approval, publish public hearing notice; and
5. Upon executive approval, appoint a representative of the Board of Land and Natural Resources as public hearing master for the proposed rule amendment's public hearing.

Respectfully submitted,

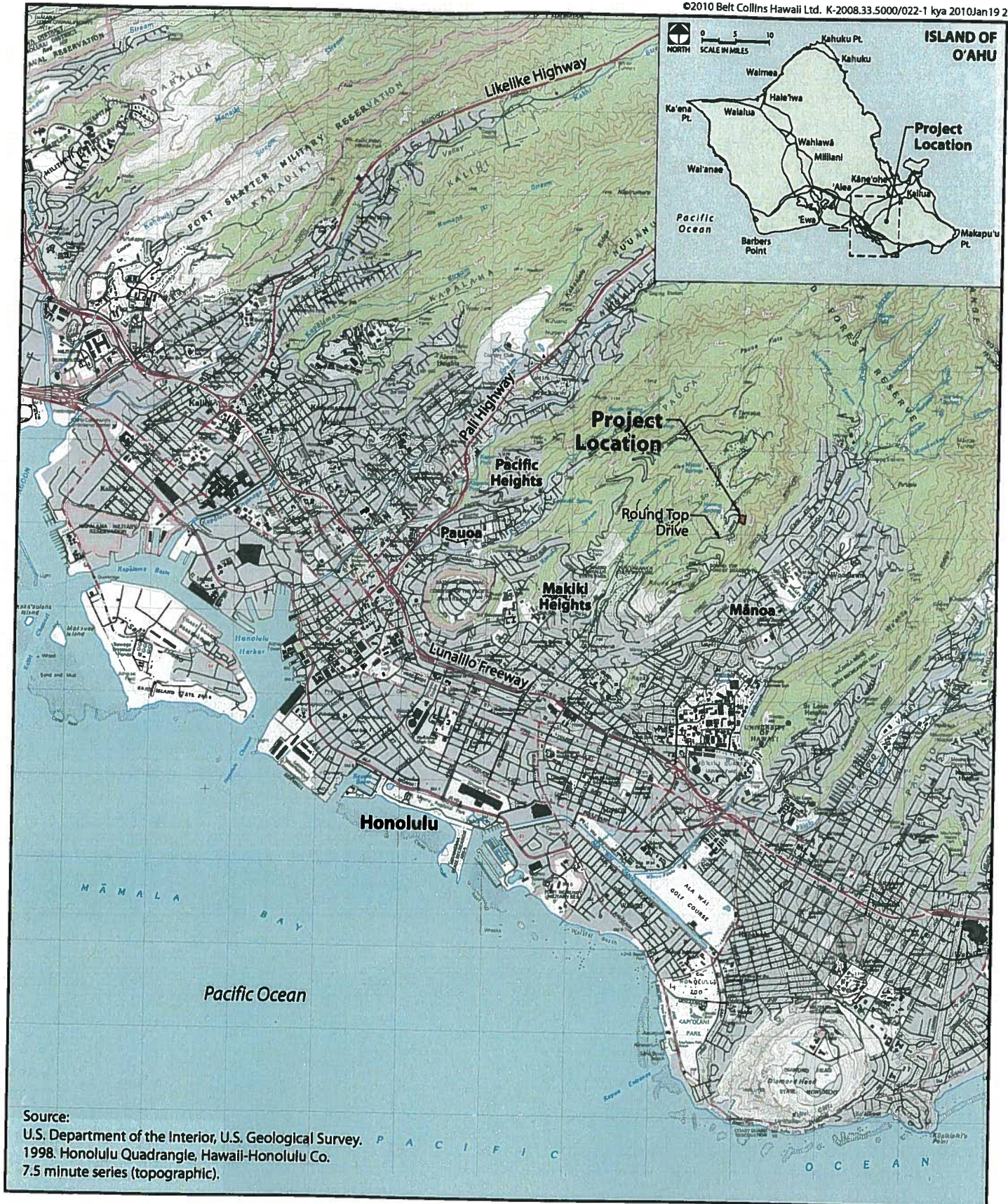


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for Submittal:



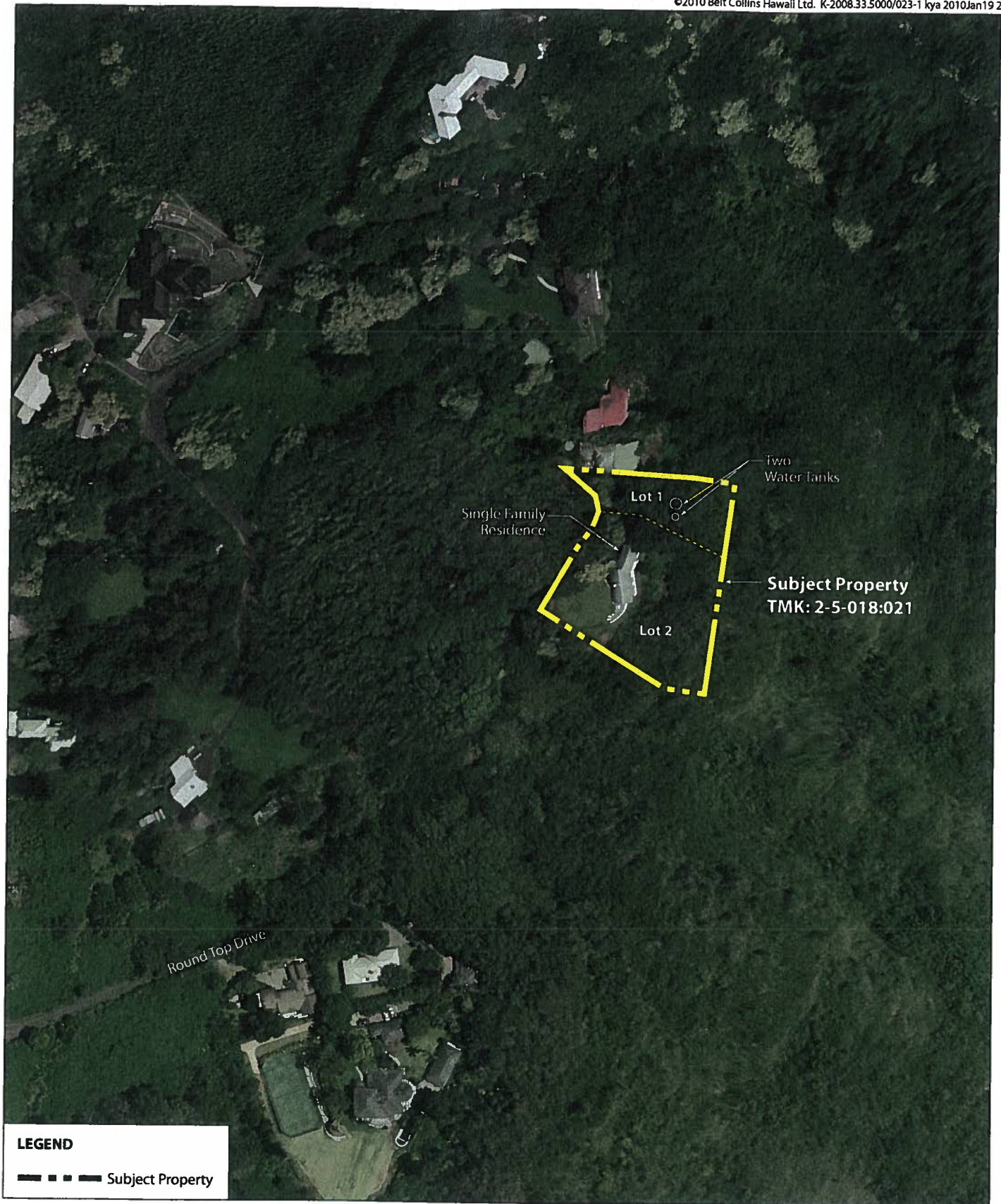
LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources



0 .5 1
 SCALE IN MILES

EXHIBIT A

Figure 1
REGIONAL MAP
 Conservation Subzone Boundary Amendment
 January 2010



0 50 100 200
SCALE IN FEET

EXHIBIT B

Figure 2
VICINITY MAP
Conservation Subzone Boundary Amendment
January 2010



1 Round Top Drive, Lot 1 on the left.



2 Case residence.



3 Entrance to Case residence, TMK 2-5-018-021.



4 Partial view of lot 1.



5 Lot 1, looking towards Lot 2.



6 TMK 2-5-018-21 water tanks.



7 Two water tanks.



8 Case family residence facing Mānoa Valley.



9 Case residence, Lot 2.

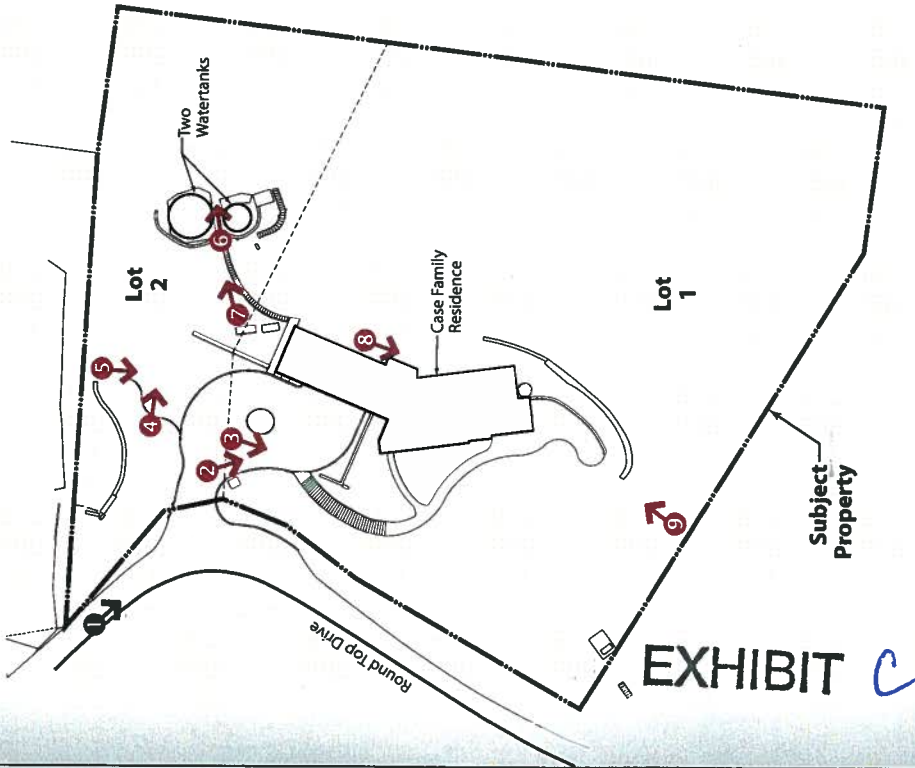


EXHIBIT C

Figure 19
PHOTOGRAPHS OF PROJECT SITE
Conservation Subzone Boundary Amendment
January 2010



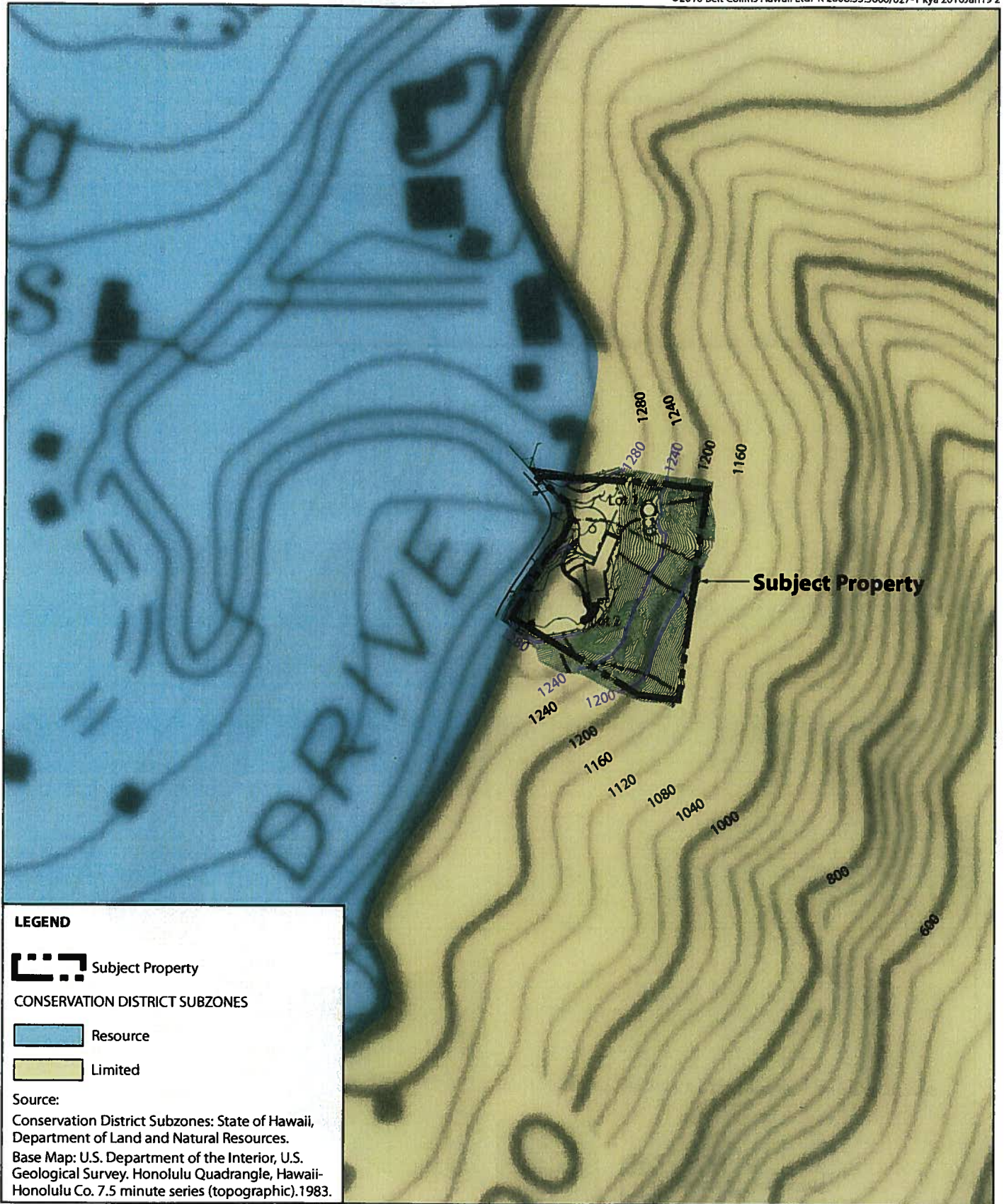


Figure 8
DLNR CONSERVATION DISTRICT SUBZONES
 Conservation Subzone Boundary Amendment
 January 2010



0 50 100 200
 SCALE IN FEET

EXHIBIT D

- LEGEND**
- Proposed Subzone Boundary Amendment
 - Resource Subzone
 - Limited Subzone

R

L

Source:
Tovill, Shigeoka & Associates, Inc. Land Surveyors, November 20, 2008



Figure 9
PROPOSED
SUBZONE BOUNDARY AMENDMENT
Conservation Subzone Boundary Amendment
January 2010

